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999 E Street, N.W.
Washington, D.C. 20463

FIRST GENERAL COUNSEL'S REPORT

MUR: 6200

DATE COMPLAINT FILED: June 24, 2009

DATE OF NOTIFICATION: June 30, 2009

LAST RESPONSE RECEIVED: Aug. 18, 2009

DATE ACTIVATED: September 1, 2009

EXPIRATION OF SOL: Earliest April 7, 2013
Latest July 15, 2013

COMPLAINANT:

Melanie Sloan/Citizens for Responsibility and
Ethics in Washington

RESPONDENTS:

Senator John Ensign
Michael and Sharon Ensign
Ensign for Senate and Lisa Lisker,
as treasurer¹
Battle Born Political Action Committee and
Lisa Lisker, as treasurer

RELEVANT STATUTES:

2 U.S.C. § 431(8)(A)(ii)
2 U.S.C. § 434(b)
2 U.S.C. § 441a

INTERNAL REPORTS CHECKED:

FEC Disclosure Reports
Senate Financial Disclosure Report

FEDERAL AGENCIES CHECKED:

None

I. INTRODUCTION

The complaint and amended complaint filed by Citizens for Responsibility and Ethics in Washington ("CREW") allege that on April 7, 2008, transfer of money to Cynthia Hampton, then the treasurer of Ensign for Senate ("the Committee"), the authorized campaign committee for

¹ Cynthia Hampton was the treasurer of Ensign for Senate and the Battle Born PAC at the time that the payments at issue were made, but was replaced by Lisa Lisker in both positions.

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1 Senator John Ensign, and the treasurer of Senator John Ensign's leadership PAC,² the Battle
2 Born Political Action Committee, ("the PAC"), constituted a severance payment and was thus an
3 excessive and unreported contribution made to, and received by, the Committee and the PAC, in
4 violation of 2 U.S.C. §§ 434(b)(3), 441a(a), and 441a(f). Michael and Sharon Ensign ("the
5 Ensigns"), parents of Senator John Ensign, transferred the money about a month before Ms.
6 Hampton left her treasurer position and shortly after the disclosure of a personal relationship
7 between Senator Ensign and Ms. Hampton to their families. Supplemental Complaint at 1-2.
8 The transfer at issue consists of a \$96,000 check from the Ensigns' trust account made out to the
9 Hampton family, including Cynthia Hampton, her husband Doug, and two of their three children.
10 See Committee Response, Exhibit A (copy of canceled \$96,000 check).

11 The Committee, the PAC, and Michael Ensign filed largely similar responses. The
12 responses assert that the transfers to the Hampton family were gifts from the Ensigns, not a
13 severance payment related to the termination of Cynthia Hampton's positions with the
14 Committee and the PAC. See Ensign for Senate Response at 2-3, Battle Born PAC Response at
15 2-3, and Michael Ensign Response at 2-3. The responses state that the gifts were given "out of
16 concern for the well-being of long-time family friends" after the Ensigns were informed of the
17 relationship between their son and Ms. Hampton. *Id.*

18 As further discussed below, and based on available information, it appears that there is
19 reason to believe that at least part of the \$96,000 transfer was a severance payment to Ms.
20 Hampton, and thus was an excessive contribution from Michael and Sharon Ensign. Further, this
21 transaction was not reported by the Committee or the PAC. An investigation into this matter is

² A leadership PAC is a political committee that is directly or indirectly established, financed, maintained or controlled by a candidate or an individual holding federal office, but is not an authorized committee of the candidate or officeholder and is not affiliated with an authorized committee of a candidate or officeholder.

1 warranted to resolve questions raised by the conflicting available information. Thus, this Office
2 recommends that the Commission find reason to believe that 1) Michael and Sharon Ensign
3 made, and Ensign for Senate and Lisa Lisker, in her official capacity as treasurer, and the Battle
4 Born PAC and Lisa Lisker, in her official capacity as treasurer, accepted excessive contributions;
5 and 2) that the Committee and the PAC failed to report the contributions from the Ensigns. We
6 further recommend that the Commission authorize compulsory process, as necessary.

7 **II. FACTUAL AND LEGAL ANALYSIS**

8 **A. Factual History**

9 The initial complaint in this matter alleged that, according to news reports, Senator John
10 Ensign paid Cynthia Hampton "an unknown amount of money out of his own pocket as a
11 severance payment" after the May 20, 2008, termination of her employment as the treasurer of
12 Ensign for Senate and as treasurer of Ensign's Battle Born Political Action Committee.
13 Complaint at 3, *see also* Jim Rutenberg and Steve Friess, *After Relationship, Senator Resigns*
14 *Leadership Job*, NEW YORK TIMES, June 18, 2009 (Complaint Exhibit A). CREW alleged that
15 this "severance payment" was an undisclosed in-kind contribution from Ensign to the Committee
16 and an undisclosed and excessive in-kind contribution from Ensign to the PAC. Complaint at 4.
17 Therefore, CREW's original complaint alleged violations of 2 U.S.C. §§ 434(b)(3)(A) and
18 441a(a)(1) by Ensign, Ensign for Senate and Lisa Lisker, in her official capacity as treasurer, and
19 the Battle Born Political Action Committee and Lisa Lisker, in her official capacity as treasurer.
20 *Id.* at 3-4.

21 A supplement to the Complaint, following additional details revealed in the press, alleged
22 that, rather than the unquantified "severance payment" from Ensign discussed in the original
23 Complaint, it appeared that Ensign's parents, Michael and Sharon Ensign, made a transfer to

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1 Cynthia Hampton's family totaling \$96,000 in April 2008, prior to her dismissal from her
2 treasurer positions in May 2008. Supplemental Complaint at 1. Of this \$96,000, CREW alleges
3 that a portion was paid to Cynthia Hampton "as a severance payment for the loss of her positions
4 as treasurer," and "may constitute illegal excessive in-kind contributions by the Ensigns to both
5 Ensign for Senate and the Battle Born PAC" in violation of 2 U.S.C. §§ 441a(a) and 441a(f).
6 Supplemental Complaint at 2; *see also* Dan Eggen and Chris Cillizza, *Ensign's Parents Made*
7 *Payments to Mistress, Her Family*, WASHINGTON POST, July 10, 2009 (Supplemental Complaint
8 Exhibit A)³; Al Kamen, *Hillary Clinton, Back After a Break*, WASHINGTON POST, July 15, 2009
9 (Supplemental Complaint Exhibit B). Further, the Supplement notes that neither the Committee
10 nor the PAC reported receiving "any ... contributions from either Michael or Sharon Ensign."
11 Supplemental Complaint at 2. The Eggen/Cillizza article, Supplemental Complaint Exhibit A,
12 questions whether "the \$96,000 in payments to the Hampton family might be viewed as a way
13 around campaign rules that require reporting severance packages for employees." CREW
14 therefore alleges that the Committee and the PAC's failure to report the contribution was a
15 violation of 2 U.S.C. § 434(b)(3)(A).

16 The Committee, the PAC, and Michael Ensign filed very similar responses. Senator
17 Ensign and his mother, Sharon Ensign, did not respond, though each provided a sworn affidavit
18 accompanying the other responses. The responses state that Ensign's mother and father each
19 provided four members of the Hampton family with a gift of \$12,000 (total gifts to each of the
20 four Hamptons were \$24,000 each, for a total of \$96,000 from Michael and Sharon Ensign).
21 Ensign for Senate Response at 2. The gift of \$96,000 was made in one check dated April 7,

³ This WASHINGTON POST article reported that the \$96,000 was disbursed in eight separate checks of \$12,000 each, citing Paul Coggins, Sen. Ensign's attorney. *Id.* That representation is contradicted by the press release issued by Coggins on July 9, 2009 (referenced at Supplemental Complaint at 1) and by Ensign for Senate Response Exhibit A (a copy of the canceled single check for \$96,000).

1 2008, made out to Doug, Cynthia, and their sons, Brandon and Blake Hampton. Ensign for
2 Senate Response at Exhibit A (copy of canceled check). The responses state that the Ensigns
3 gave the gifts "out of concern for the well-being of long-time family friends" when the Ensigns
4 were informed of the relationship between their son and Cynthia Hampton. Ensign for Senate
5 Response at 2 and 3. The Ensigns wanted to give a \$100,000 gift, but instead gave \$96,000
6 because the multiple \$12,000 gifts would fit within the maximum permitted tax-free gift limits
7 under IRS gift tax rules. *Id.* at 3-4.

8 Both Michael and Sharon Ensign submitted sworn affidavits stating that they did not
9 intend the gifts to the Hampton family to be severance payments to Cynthia Hampton, and these
10 gifts were part of a pattern of significant financial gifts from the Ensign family (largely from
11 Senator Ensign and his wife, Darlene Ensign) to the Hamptons over the years. *See Parents'*
12 *Affidavits at ¶¶ 5-6,*⁴ attached unsigned as Exhibits B and C to the Ensign for Senate Response,
13 and later filed in signed and sworn form with the Commission on August 12, 2009. The Ensigns
14 also state that neither their son nor anyone else asked them to make these gifts, nor did the
15 Senator or anyone else suggest that these payments should function as severance payments to
16 Cynthia Hampton or her husband Doug. *Id.* at ¶3, *see also* signed affidavit of John Hensign, filed
17 with the Commission on August 18, 2009 (*same*). The responses also assert that the allegation
18 that the payment was a severance payment to Cynthia Hampton is "belied by the fact that the
19 amount of the gifts would equal almost two full years of Cindy Hampton's salary – an
20 excessively disproportionate amount that is not indicative of a severance package." Ensign for
21 Senate Response at 5.

⁴ Michael and Sharon Ensign's affidavits are essentially identical except for additional statements in Michael Ensign's affidavit regarding the method of payment from the family trust, and will be referred to as "Parents' Affidavits" collectively.

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The responses surmise that CREW and others were misled as to the source, amount, and purpose of the payments to Cynthia Hampton by the media's reliance on an anonymous statement and a misquotation of Sen. Ensign's communications director, Tory Mazzola, when Mazzola attempted to dispute media reporting discussing an alleged severance payment. The anonymous statement, included in the article attached to the Complaint as Complaint Exhibit A (referenced above), stated that someone close to the Ensign family said that the Senator had disclosed the relationship to his wife and had attended counseling with her, and thereafter "dismissed Ms. Hampton from his political term with a severance that he paid from his own pocket." See Ensign for Senate Response at 5,⁵ see also Complaint Exhibit A. Respondents state that the anonymous statement is directly contradicted by the sworn affidavits of the Ensigns and Senator Ensign. See Ensign for Senate Response at 5.

The alleged misquotation of Mazzola occurred after his effort to clarify a disputed factual issue in a July 13, 2009, article in the Washington Post. The Washington Post ran an article on July 10, 2009, that discussed the \$96,000 transfer from Ensign's parents, but also stated "[t]he disclosure comes a day after Douglas Hampton alleged that Ensign gave his wife a \$25,000 severance payment." Supplemental Complaint Exhibit A. On July 13, a regular Washington Post columnist, in the *Leap*, commented that "[t]here's still the matter of an alleged severance payment to Cynthia Hampton by Ensign of at least \$25,000. That payment was not reported, as required by law, to the Federal Election Commission." Al Kamen, *The Senate's Got Talent, and Then Some*, WASHINGTON POST, July 13, 2009 (Ensign for Senate response Exhibit Q). Although the responses state that Mazzola contacted the Post to dispute the assertion that there

⁵ The responses indicate that this quote is from an unidentified June 23, 2009 NEW YORK TIMES article, but the quote is actually from the June 18, 2009 NEW YORK TIMES article that was Complaint Exhibit A.

1 was a separate severance payment, and that some portion of the \$96,000 "gift" constituted a
2 severance payment, the responses assert that the Post's reporting of the payment did not convey
3 that there was not a separate \$25,000 payment, nor was any portion of the \$96,000 transfer a
4 severance payment. See Ensign for Senate's Response at 6-7, Battle Born PAC's Response at 6-
5 7.

6 Respondents also state that "the gifts to the Hamptons are entirely consistent with the
7 Ensigns' past pattern of generosity – all of which occurred while Cindy Hampton served as
8 Treasurer to the Committee." Ensign for Senate Response at 5. Respondents detailed gifts and
9 financial support from John and Darlene Ensign to the Hamptons dating back to 2004, including
10 a 2004 loan of \$15,000 that was repaid without interest, a \$25,000 loan in 2006 that was never
11 repaid, \$15,170 in 2006 for private school tuition for the Hampton children, \$4,500 for
12 counseling for one of the Hampton children, another \$23,970 in private school tuition in 2007,
13 and a \$20,000 loan that was verbally forgiven. See Ensign for Senate Response at 3. The
14 Responses also note that prior to the \$96,000 transfer, Michael and Sharon Ensign included the
15 Hamptons in a 2006 Hawaiian vacation via private jet, which was also attended by John and
16 Darlene Ensign and their children. *Id.* Respondents claim the value of this trip was over
17 \$30,000. *Purvis's* Affidavits at ¶5.⁶ Combining the single previous gift from Michael and

⁶ The documentation supporting the claim that Michael and Sharon Ensign provided the Hamptons with this gift appears to establish that such a trip took place, but does not clearly indicate that the parents paid its costs. In fact, there is some indication that John Ensign, at least initially, incurred some of the costs. For instance, an invoice for \$9,262.00 from vendor Pure Maui states "Bill to: John Ensign." See Battle Born PAC's Response Exhibit I. A charge for \$9,262.00 from Pure Maui appears on a credit card statement, but the cardholder's name has been redacted. See Battle Born PAC's Response Exhibit K. A reasonable inference can be drawn that this credit card statement belongs to John Ensign, because in addition to this Pure Maui charge, the statement contains, *inter alia*, a charge for \$1,341.97 from the restaurant Spago Maui dated December 27, 2006. *Id.* According to an itinerary for the trip, the meal at Spago Maui was attended by John and Sharon Ensign and the Hamptons, but not by Michael and Sharon Ensign. See Battle Born PAC's Response Exhibit H. Presumably, someone in attendance at the dinner put the charges on his or her credit card. In addition, Michael and Sharon Ensign were not listed on the itinerary as present at any other event on this trip. *Id.*

Sharon Ensign with the financial support from John and Darlene Ensign, the Responses assert that the \$96,000 transfer from the Ensigns to the Hamptons was merely one in a pattern of significant gifts from the Ensign family to the Hamptons. Battle Born PAC Response at 3.

The New York Times published an article on October 2, 2009, based on interviews with the Hamptons, in which the Hamptons described a plan that Mr. Hampton and Ensign worked on in late February 2008 under which Ensign would help Doug Hampton line up lobbying clients in exchange for him leaving his job with Ensign's Senate office. See Eric Lichtblau and Eric Lipton, *Senator's Aid After Relationship Raises Flags Over Ethics*, NEW YORK TIMES, October 2, 2009 ("Lichtblau Lipton article") (http://www.nytimes.com/2009/10/02/us/politics/02ensign.html?_r=1&scp=1&sq=Ensign%20Hampton&st=cse, last visited January 15, 2010). This article states that "[s]oon after [working out the deal for Doug Hampton's new job], Mr. Ensign called the Hamptons separately. Cynthia Hampton, he said, would have to leave her \$48,000 a year campaign job, while her husband would have to quit as planned. But as severance, the senator said he and his wife would give the Hamptons a check for about \$100,000, Ms. Hampton said." *Id.* at 6.

Linked to the online version of the Lichtblau Lipton article were images of documents that the Hamptons turned over to the New York Times. On the issue of the payment made to the Hampton family, Mr. Hampton provided his handwritten notes from the phone call detailed above. These notes, dated "4/2/08" and written on Ensign office stationery, read: "Exit strategy and severance for Cindy, Exit strategy and severance for Doug, Communication Plan for NRSC and official office, NO CONTACT WHAT SO EVER WITH CINDY!" Lichtblau Lipton article Exhibit 3, (<http://documents.nytimes.com/in-wake-of-affair-senator-ensign-may-have-violated-an-ethics-law-2#p=3>, last visited January 15, 2010) (attached here as Exhibit 1). Another

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exhibit to the online article was a page of handwritten notes entitled "Record of discussions with John Ensign." This page details what Doug Hampton represents are notes from three phone conversations with John Ensign on April 2. Notes of the first call, which was at 9:40 a.m., include information similar to that discussed above, and it appears to be the same phone call. The second call was at noon, and the notes detail further discussions of a plan for a new job for Doug Hampton, including that "[w]e discussed timing of departure JE agreed for me to stay on thru April - Better for client building." The third call was at 7:30 p.m., with the notes stating "John called asked if it was OK to share the outlines of a plan. - Doug - 2 mn. severance, continue client building; - Cindy - 1 year salary; - Discussed gift rules and tax law; -- Shared a plan to have both he and Darlene write ck's in various amounts equaling 96K. - He asked if the offer was OK and did I agree - I said I would need to think about [sic] and would get back with him." Lichtblau Lipton article Exhibit 5, (<http://documents.nytimes.com/in-wake-of-affair-senator-ensign-may-have-violated-an-ethics-law-2#p=5>, last visited January 15, 2010) (attached here as Exhibit 2). The article continued that "Mr. Ensign's lawyer in June [2009], however, called the \$96,000 payment that was ultimately made a tax-free gift from Mr. Ensign's parents to the Hamptons 'out of concern for the well-being of longtime family friends during a difficult time.'" Lichtblau Lipton article.

Mr. Hampton has reiterated his assertion that the \$96,000 payment was a severance payment, most notably in a November 23, 2009 interview on the television program 'Nightline' and an accompanying article published on ABC News' website (<http://abcnews.go.com/print?id=9140788>, last visited on January 14, 2010). In that article, the payment was discussed as follows: "The Ensign family has said the \$96,000 was a gift and not severance... Hampton told 'Nightline' the opposite, saying it was 'crystal clear' that the \$96,000

1 was, in fact, severance and not a gift. 'Crystal clear,' Hampton said. 'I took notes. I've shared
2 those notes. They're well documented. They were clearly what he deemed as severance.'"

3 **B. Legal Analysis**

4
5 A third party's payment of a political committee's administrative expenses, such as the
6 salary of a political committee's employee, results in a contribution to the political committee. A
7 "contribution" includes any gift, subscription, loan, advance, or deposit of money or anything of
8 value made by any person for the purpose of influencing any election for federal office, or
9 payment by any person of compensation for personal services rendered by another person
10 without charge to a political committee for any purpose. 2 U.S.C. § 431(8)(A).⁷ No person may
11 make a contribution to any candidate and his or her authorized political committee with respect
12 to any election for federal office that exceeds \$2,000 (adjusted for inflation). 2 U.S.C.
13 §§ 441a(a)(1)(A). No person may contribute more than \$5,000 per year to a leadership PAC,
14 such as the Battle Born PAC. 2 U.S.C. § 441a(a)(1)(C). Knowing receipt of any excessive
15 contribution is a violation of 2 U.S.C. § 441a(f). Failure to report receiving a contribution is a
16 violation of 2 U.S.C. § 434(b).

⁷ See *California Medical Association v. F.E.C.*, 453 U.S. 182, 199, fn. 19 (1981) (plurality opinion):

[C]ontributions for administrative support clearly fall within the sorts of donations limited by § 441a(a)(1)(C). Appellants contend, however, that because these contributions are earmarked for administrative support, they lack any potential for corrupting the political process. We disagree. If unlimited contributions for administrative support are permissible, individuals and groups ... could completely dominate the operations and contribution policies of independent political committees.

While this quoted language is from the section of the opinion joined by only a plurality of Justices, the concurring opinion and the dissent differ from the plurality on other grounds not contradictory to the position taken here. See *Cal. Med.*, 453 U.S. at 201-209. Further, in *Colorado Republican Federal Campaign Comm. v. F.E.C.* seven Justices cited to *Cal. Med.*, including the position cited here, for the proposition that the Court has previously upheld such contribution limits to PACs. See *Colorado Republican Federal Campaign Comm. v. F.E.C.*, 518 U.S. 604, 617 (1996) (plurality opinion), and 518 U.S. at 628 (Justice Kennedy, Chief Justice Rehnquist, and Justice Scalia (concurring in the judgment and dissenting in part)).

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1 If a portion of the money transferred by the Ensigns to the Hamptons paid administrative
2 costs of the Committee or the PAC, then the amount exceeding the contribution limits would be
3 an excessive contribution, and the failure to report the receipt constitutes a reporting violation.
4 See 2 U.S.C. §§ 441a(a) and 434(b). According to the Hamptons' assertions, Ensign obligated
5 himself, the Committee, and the PAC to make a severance payment to Cynthia Hampton in
6 exchange for her leaving her jobs with the Committee and the PAC. A severance payment, by its
7 nature, is a payment at the time of a job termination in lieu of salary payments.⁸ Just as the
8 Committee and the PAC properly paid Cynthia Hampton's salary for her treasurer jobs, if she
9 received a severance payment, such payment would be the responsibility of the Committee and
10 the PAC, or if it was paid by a contributor, would have to be reported as a contribution and fall
11 within the contribution limits. See *Cal. Med.*, *supra*. (discussing administrative costs, which
12 include compensation for staff, as contributions if paid by a third party). If the information that
13 the Hamptons have shared with the media is correct, a severance payment for Cynthia Hampton
14 appears to be part of an effort to provide both Cynthia and Doug Hampton a measure of
15 compensation for the loss of their jobs – Ensign aided Doug Hampton in getting a new job, and
16 rather than finding Cynthia Hampton a new job, she received a severance payment.

17 There appears to be a question of fact as to whether the payments to the Hampton family
18 constituted severance. The responses and affidavits deny that the payment to the Hampton
19 family constituted severance. See Ensign for Senate Response at 1, 4-5; Battle Born PAC
20 Response at 1, 4-5; Parents' Affidavits at ¶¶ 6, 8. Further, the Responses of the Committee and
21 the PAC directly deny that the monies transferred to the Hampton family by Ensign's parents

⁸ Merriam Webster's online dictionary defines "severance pay" as "an allowance usually based on length of service that is payable to an employee on termination of employment." See <http://www.merriam-webster.com/dictionary/severance> (last visited January 26, 2010).

1 were related to Cynthia Hampton's employment, "nor were they related to any expense or debt
2 that the Committee would have otherwise incurred." Ensign for Senate Response at 7; Battle
3 Born PAC Response at 7. While in the October 2 New York Times article the Hamptons
4 represented that they were originally told that they would receive money directly from Ensign as
5 severance payments to Cynthia Hampton, Ensign never transferred money directly to the
6 Hamptons during this period. See Lichtblau Lipton article. In addition, the responses argue that
7 the amount of the payment makes it an unlikely severance payment (see *supra* at 5-6 and Ensign
8 for Senate Response at 5).

9 On the other hand, the Hamptons have alleged that Ensign promised them severance
10 payments equal to a year of salary for Cindy Hampton (plus additional payments for Doug
11 Hampton) in exchange for leaving her jobs after her improper relationship with Ensign became
12 known to both families. See Complaint exhibits, *supra*, Lichtblau Lipton article, *supra*, and
13 Nightline program and ABC News article, *supra*. As represented in Doug Hampton's notes, it
14 appears that the alleged severance payments that Ensign offered were very detailed. Hampton's
15 notes include that on the day that Ensign first suggested this severance plan, he discussed a
16 \$96,000 figure and the need to comply with gift tax laws. Ensign's parents made a payment of
17 \$96,000, in a fashion that complied with IRS gift tax laws, five days after the April 2, 2008,
18 phone call. While the Committee and the PAC could have paid severance to Cynthia Hampton
19 without regard for the contribution limits, the Ensigs, in making the payments on their own,
20 would have been required to limit their contributions to the Committee and the PAC to the
21 maximum allowable 2008 contribution of \$2,300 each to the Committee and \$5,000 each to the
22 PAC. The \$96,000 payment therefore could be an excessive contribution from the Ensigs of as
23 much as \$81,400, (\$96,000 - \$14,600), in violation of 2 U.S.C. §§ 441a(a)(1)(A) and (C), and the

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1 Committee and the PAC's receipt of these excessive contributions would be a violation of
2 2 U.S.C. § 441a(f).⁹ Similarly, if the payment constituted severance, it appears that the
3 Committee and the PAC would have been required to disclose such excessive in-kind
4 contributions on its contributions and expenditures schedules in accordance with
5 11 C.F.R. § 104.13(a), and the failure to do so would constitute a violation of 2 U.S.C. § 434(b).

6 Given that the Hamptons' description of the facts appears to be supported by
7 contemporaneous documentation, there is reason to believe that the payment the Ensigns made
8 may have been severance instead of part of a pattern of giving to the Hamptons. Further, any
9 pattern of giving to the Hamptons appears to have been made by the Senator and his wife—not
10 the Senator's parents—who appear to have given all the prior gifts except the trip to Hawaii.
11 With respect to the trip to Hawaii, there is information that suggests that the Senator and his wife
12 may have paid some of the expenses associated with that trip as well.¹⁰

13 The conflict between the Hamptons' representation of the events leading up to Cynthia
14 Hampton's departure from her jobs and the respondents' explanations of the purpose of the
15 payment suggests that an investigation is warranted to determine whether the Ensigns violated

⁹ There are some important distinctions between this matter and previous Commission matters involving parental gifts to candidates, see, e.g., MUR 5138 (Ferguson), MUR 5321 (Janet Robert), MUR 5724 (Feldkamp), and MUR 6104 (Montagano). First, in these "parental gift" cases, the Commission considered whether the gifts from a parent to a child who was also a candidate were the candidate's personal funds or excessive contributions to the child's campaign by examining whether there was a previously existing pattern of giving from the parents to the candidate. See 11 C.F.R. § 110.10(b)(2) ("personal funds" are "gifts of a personal nature which had been customarily received prior to the beginning of the election cycle"). The respondents attempt to establish a pattern of giving from the Ensign family to the Hamptons, but all but one of the prior gifts were made by the Senator and his wife, not his parents. Second, none of the past cases appears to have involved parental benefits provided to a candidate's leadership PAC, and even a candidate's contributions to his or her leadership PAC are subject to limitations. See 2 U.S.C. § 441a(a)(1)(C). Third, the instant matter presents disclosure failures not present in the other matters. As the payment from Ensign's parents went to Cynthia Hampton and her family, not to Ensign, and did not pass through Committee accounts at any point, this matter is different from past cases because at no point were any transactions disclosed. Had the Ensigns given their son funds to give to his authorized committee to pay Cynthia Hampton an alleged severance, the payment would have been reported on disclosure reports.

¹⁰ See footnote 6 (information provided by respondents suggests Senator Ensign may have paid approximately \$10,500 of this amount.)

1 the Act by making excessive contributions, and whether the Committee and the PAC violated the
2 Act by accepting them and failing to disclose them. Thus, this Office recommends that the
3 Commission find reason to believe that Michael and Sharon Ensign made, and Ensign for Senate
4 and Lisa Lisker, in her official capacity as treasurer, and the Battle Born Political Action
5 Committee and Lisa Lisker, in her official capacity as treasurer, received excessive
6 contributions; and that the Ensign for Senate Committee and the Battle Born Political Action
7 Committee failed to disclose the contributions. We recommend that the Commission take no
8 action at this time as to Senator Ensign because the information shows that the parents, not the
9 Senator, made the \$96,000 payment, and we need to investigate the circumstances of this
10 payment. Thus, we also recommend that the Commission pursue an investigation into this
11 matter.

12 [REDACTED]

13 [REDACTED]

14 [REDACTED]

15 [REDACTED]

16 [REDACTED]

17 [REDACTED]

18 [REDACTED]

19 [REDACTED]

20 [REDACTED]

21 [REDACTED]

22 [REDACTED] Therefore, we recommend that the Commission
23 authorize the use of compulsory process.

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IV. **RECOMMENDATIONS**

1. Find reason to believe that Michael and Sharon Ensign violated 2 U.S.C. §§ 441a(a);
2. Find reason to believe that Ensign for Senate and Lisa Lisker, in her official capacity as treasurer, and the Battle Born Political Action Committee and Lisa Lisker, in her official capacity as treasurer, violated 2 U.S.C. § 441a(f);
3. Find reason to believe that Ensign for Senate and Lisa Lisker, in her official capacity as treasurer, and the Battle Born Political Action Committee and Lisa Lisker, in her official capacity as treasurer, violated 2 U.S.C. § 434(b);
4. Take no action at this time as to Senator John Ensign;
5. Authorize the use of compulsory process as to all Respondents and witnesses in this matter, including the issuance of appropriate interrogatories, document subpoenas, and deposition subpoenas, as necessary;
6. Approve the attached Factual and Legal Analyses;
7. Approve the appropriate letters.

Thomasenia Duncan
General Counsel

3/31/10

Date

BY:

Stephen Gura
Stephen Gura

Deputy Associate General Counsel

Peter G. Blumberg

Peter G. Blumberg
Assistant General Counsel

Audra Hale-Maddox

Audra Hale-Maddox
Attorney

Attachments:

MUR 6200 (Ensign)
First General Counsel's Report
Page 16 of 16

1
2
3
4
5
6

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